

**United States Department of Labor
Employees' Compensation Appeals Board**

M.P., Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
Whitestone, NY, Employer**

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**Docket No. 18-0124
Issued: May 14, 2018**

Appearances:

Wayne Johnson, Esq., for the appellant¹

Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

CHRISTOPHER J. GODFREY, Chief Judge

PATRICIA H. FITZGERALD, Deputy Chief Judge

ALEC J. KOROMILAS, Alternate Judge

JURISDICTION

On October 23, 2017 appellant, through counsel, filed a timely appeal from an April 24, 2017 nonmerit decision of the Office of Workers' Compensation Programs (OWCP).² As more than 180 days has elapsed since the last merit decision dated April 14, 2016, to the filing of this

¹ In all cases in which a representative has been authorized in a matter before the Board, no claim for a fee for legal or other service performed on appeal before the Board is valid unless approved by the Board. 20 C.F.R. § 501.9(e). No contract for a stipulated fee or on a contingent fee basis will be approved by the Board. *Id.* An attorney or representative's collection of a fee without the Board's approval may constitute a misdemeanor, subject to fine or imprisonment for up to one year or both. *Id.*; *see also* 18 U.S.C. § 292. Demands for payment of fees to a representative, prior to approval by the Board, may be reported to appropriate authorities for investigation.

² Under the Board's *Rules of Procedure*, an appeal must be filed within 180 days from the date of issuance of an OWCP decision. An appeal is considered filed upon receipt by the Clerk of the Appellate Boards. *See* 20 C.F.R. § 501.3(e)-(f). One hundred and eighty days from OWCP's April 24, 2017 decision was Saturday, October 21, 2017. Because the last day of the 180-day filing period fell on a Saturday, the filing period is extended until the close of the next business day, which was Monday, October 23, 2017. Accordingly, the appeal is timely filed pursuant to 20 C.F.R. § 501.3(f)(2).

appeal, pursuant to the Federal Employees' Compensation Act³ (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board lacks jurisdiction over the merits of this case.

ISSUE

The issue is whether OWCP properly denied appellant's request for reconsideration of the merits of her claim pursuant to 5 U.S.C. § 8128(a).

On appeal counsel contends that the medical evidence of record establishes appellant's entitlement to benefits.

FACTUAL HISTORY

On May 8, 2015 appellant, then a 47-year-old clerk, filed a traumatic injury claim (Form CA-1) alleging that, on that date, she injured her head and neck when she tripped over a pallet jack and fell backwards. She stopped work on May 9, 2015.

In a May 8, 2015 attending physician form (Form CA-20), and a duty status report (Form CA-17) Dr. Jennifer Ng, an attending physician, diagnosed a soft tissue injury which she attributed to appellant's tripping over work equipment that day.

The record contains a Form CA-17 dated May 15, 2015 diagnosing a soft tissue injury due to a May 8, 2015 work injury. The health care provider's signature on the form is illegible.

In a May 8, 2015 authorization for examination and/or treatment (Form CA-16), T.D., an employing establishment official, authorized treatment for the May 8, 2015 incident.

On May 12, 2015 Dr. Ng requested that appellant be excused from work until May 18, 2015 when she could return to work with restrictions.

In a June 10, 2015 development letter, OWCP advised appellant that the evidence of record was insufficient to support her claim. It noted that she had not submitted medical evidence containing a firm diagnosis causally related to the alleged incident. Appellant was afforded 30 days to submit additional evidence, including a narrative report from her treating physician.

By decision dated July 30, 2015, OWCP denied appellant's claim. It found that she had not submitted medical evidence containing a diagnosis causally related to the accepted employment incident.

OWCP subsequently received a July 28, 2015 Form CA-17 from Dr. Ng diagnosing degenerative disc disease, noting a May 7, 2015 date of injury and providing work restrictions.

On August 8, 2015 appellant requested a telephonic hearing before an OWCP hearing representative, which was held on March 10, 2016. Dr. Ng, in an October 5, 2015 letter, advised that appellant was seen that day for leg weakness and requested that she be excused from work until October 10, 2015.

³ 5 U.S.C. § 8101 *et seq.*

In an October 15, 2015 letter, Dr. Stephen N. Scelsa, an attending Board-certified neurologist and clinical neurophysiologist, advised that he had been treating appellant for radiculopathy and polyneuropathy. He further advised that she could return to work on October 19, 2015 with lifting restrictions.

By report dated November 2, 2015, Dr. Eugene M. Bulkin, an examining Board-certified physiatrist, related that appellant was disabled from work until November 23, 2015 when she could return to work with restrictions. He noted that she had been under his care for an orthopedic problem.

On November 25, 2015 OWCP received a June 26, 2015 letter from Dr. Bulkin requesting that appellant be excused from work from June 17 to 26, 2015 due to a medical condition.

By decision dated April 14, 2016, OWCP's hearing representative affirmed the July 30, 2015 decision denying appellant's claim. The hearing representative found that the medical evidence of record did not establish causal relationship between the diagnosed medical condition and the accepted employment incident.

In a letter dated and received on April 13, 2017, appellant, through counsel, requested reconsideration and advised that medical evidence would be submitted. However, no additional evidence was received.

By decision dated April 24, 2017, OWCP denied reconsideration of the merits of appellant's claim. It found that she had not shown that she met the requirements of 5 U.S.C. § 8128(a) sufficient to warrant merit review.

LEGAL PRECEDENT

Section 8128(a) of FECA vests OWCP with discretionary authority to determine whether to review an award for or against compensation. The Secretary of Labor may review an award for or against compensation at any time on his own motion or on application.⁴

To require OWCP to reopen a case for merit review pursuant to FECA, the claimant must provide evidence or an argument that: (1) shows that OWCP erroneously applied or interpreted a specific point of law; (2) advances a relevant legal argument not previously considered by OWCP; or (3) constitutes relevant and pertinent new evidence not previously considered by OWCP.⁵

A request for reconsideration must be received by OWCP within one year of the date of OWCP's decision for which review is sought.⁶ If OWCP chooses to grant reconsideration, it reopens and reviews the case on its merits.⁷ If the request is timely but fails to meet at least one

⁴ 5 U.S.C. § 8128(a); *see also* *V.P.*, Docket No. 17-1287 (issued October 10, 2017); *D.L.*, Docket No. 09-1549 (issued February 23, 2010); *W.C.*, 59 ECAB 372 (2008).

⁵ 20 C.F.R. § 10.606(b)(3); *see also* *L.G.*, Docket No. 09-1517 (issued March 3, 2010); *C.N.*, Docket No. 08-1569 (issued December 9, 2008).

⁶ *Id.* at § 10.607(a).

⁷ *Id.* at § 10.608(a); *see also* *M.S.*, 59 ECAB 231 (2007).

of the requirements for reconsideration, OWCP will deny the request for reconsideration without reopening the case for review on the merits.⁸

ANALYSIS

The Board finds that OWCP properly denied appellant's request for reconsideration without further merit review of the claim.

Appellant alleged that she sustained head and neck injuries as a result of an accepted May 8, 2015 employment incident. By decision dated July 30, 2015, OWCP denied her traumatic injury claim finding that no medical evidence containing a firm diagnosis due to the accepted May 8, 2015 employment injury had been submitted. In an April 14, 2016 decision, an OWCP hearing representative affirmed the denial of appellant's claim. The hearing representative found that the medical evidence of record did not establish that the diagnosed medical conditions were causally related to the accepted employment incident.

On April 13, 2017 appellant, through counsel, requested reconsideration. By decision dated April 24, 2017, OWCP denied further merit review of her case because no evidence had been submitted on reconsideration.

In his April 13, 2017 letter, counsel merely stated that he was requesting reconsideration on behalf of appellant. There is no evidence of record which elaborates on the basis of the request or argues why it should be granted. Accordingly, the Board finds that the April 13, 2017 request for reconsideration neither alleged, nor demonstrated that OWCP erroneously applied or interpreted a specific point of law. As such appellant has not shown that OWCP erroneously applied or interpreted a specific point of law. Additionally, the Board finds that counsel did not advance a relevant legal argument not previously considered by OWCP. Consequently, appellant is not entitled to further review of the merits of her claim based on the first and second above-noted requirements under section 10.606(b)(3).

Counsel noted in the reconsideration request that additional medical evidence would be submitted. OWCP, however, did not receive additional evidence prior to its April 24, 2017 decision. The Board finds, therefore, that counsel did not submit any relevant and pertinent new evidence in support of appellant's request for reconsideration.

As appellant failed to meet the criteria enumerated under 20 C.F.R. § 10.606(b)(3), the Board finds OWCP properly denied further merit review of her traumatic injury claim.⁹

On appeal counsel contends that medical evidence of record established fact of injury and causal relationship. As noted above, however, the only issue before the Board is whether OWCP properly denied further merit review of appellant's case in its April 24, 2017 decision. Counsel offered a new argument on appeal. As the Board lacks jurisdiction to review the underlying merits

⁸ *Id.* at § 10.608(b); *E.R.*, Docket No. 09-1655 (issued March 18, 2010).

⁹ *See A.M.*, Docket No. 16-0499 (issued June 28, 2016); *A.K.*, Docket No. 09-2032 (issued August 3, 2010) (when an application for reconsideration does not meet at least one of the three requirements enumerated under section 10.606(b)(3), OWCP will deny the application for reconsideration without reopening the case for a review of the merits); *M.E.*, 58 ECAB 694 (2007); *Susan A. Filkins*, 57 ECAB 630 (2006).

of appellant's claim, it cannot review counsel's arguments regarding appellant's traumatic injury claim on appeal.¹⁰

CONCLUSION

The Board finds that OWCP properly denied appellant's request for reconsideration of the merits of the claim pursuant to 5 U.S.C. § 8128(a).

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated April 24, 2017 is affirmed.

Issued: May 14, 2018
Washington, DC

Christopher J. Godfrey, Chief Judge
Employees' Compensation Appeals Board

Patricia H. Fitzgerald, Deputy Chief Judge
Employees' Compensation Appeals Board

Alec J. Koromilas, Alternate Judge
Employees' Compensation Appeals Board

¹⁰ The Board notes that a Form CA-16 authorization for examination and/or treatment was issued by the employing establishment on May 8, 2015. When the employing establishment properly executes a Form CA-16 which authorizes medical treatment as a result of an employee's claim for an employment-related injury, the Form CA-16 creates a contractual obligation, which does not involve the employee directly, to pay for the cost of the examination or treatment regardless of the action taken on the claim. The period for which treatment is authorized by a Form CA-16 is limited to 60 days from the date of issuance, unless terminated earlier by OWCP. *See* 20 C.F.R. § 10.300(c); *Tracy P. Spillane*, 54 ECAB 608, 610 (2003).